

1 with respect to the Magten motion, I think at
2 bottom what we're dealing with is a motion to
3 extend time to investigate claims by a party that
4 does not have the power or authority to bring
5 those claims and so Your Honor I think that to
6 grant Magten an extension of time to review
7 claims when Magten doesn't have a right to bring
8 those claims, based upon the fact that the exide
9 court was completely clear, that creditors don't
10 have that right, and that was a case in this
11 district in Delaware.

12 Judge: I think Magten's counsel sounds if what she's
13 saying is we want the extra time so we can bring
14 the committee on board.

15 Bentley: That right, and that was a case in this district
16 in Delaware.

17 Judge: I think Magten's counsel sounds as if what she's
18 saying, we want the extra time so we can bring
19 the committee on board. We know it's the
20 committee that has to do this, and so you know we
21 think if we really job on the committee a little

1 bit more, they'll understand the seriousness of
2 this situation.

3 Bentley: Agreed, Your Honor, and I think we heard Mr.
4 Kornberg saying they have in the committee that
5 not only does the committee believe that the
6 prime period has passed with respect to the
7 investigation n the fraudulent conveyance issue,
8 staying away from the pru--- issue for the
9 moment. Not only does the creditor's committee
10 believe that time period passed, not only does
11 the creditors committee believe that it not
12 request an extension of that time period, but the
13 creditor's committee is on record saying that
14 they have reviewed the issues, the specific
15 issues, referred to Magten in their pleadings and
16 they believe that there's no merit to them, and
17 therefore Your Honor, to grant an extension of
18 time for Magten, I think we'd be - A) it would a
19 fundamental waste of estate resources, I think
20 that we would have Magten and the creditor's
21 committee and the debtor and CSFB spending estate
22 assets, reviewing issues that the creditor's
23 committee who has the fiduciary duty to creditors

1 of Northwestern has already reviewed and passed
2 upon, Your Honor, and I think the other thing it
3 would do, it would call into question the
4 durability the reliability of - orders in this
5 district, both of which I think would be very bad
6 results. And Your Honor, with respect to the
7 PUHCA issue, I can only say...

8 Judge: Certainly if the Committee brought a motion
9 clearly before the time of the expiration and
10 sought a 45 or 90 degree extension and showed
11 cause for that, then that wouldn't undermine the
12 durability or reliability.

13 Bentley: Not at all, Your Honor, in that..

14 Judge: IF that's what the order says.

15 Bentley: In fact, Your Honor, they would not have had to
16 make that motion, because I think Mr. Kornberg
17 has told you and will tell you that CSFB and
18 CSFB's counsel was always 100% cooperative in
19 terms of sharing information and the like, and if
20 we had gotten to the 120th day and Mr. Kornberg
21 had called me and said, I have not had enough

1 time to review these issues, I need another 45
2 days, there is no question that CSFB would have
3 granted that extension. And cooperated with the
4 committee with respect to their investigation. We
5 have no problem with the fact that the creditor's
6 committee has the right to review these issues.
7 When the dip order was entered CSFB understood
8 and the members of the bank group understood that
9 while that their financing order provided that
10 the liens and claims of CSFB were valid and
11 enforceable as Your Honor said, that there would
12 be an investigation period and that we would have
13 to cooperate with the creditor's committee so
14 that they can investigate and get comfortable
15 with those claims and liens were good. There was
16 no question that the creditor's committee needed
17 more time if they felt that we hadn't been
18 cooperative, whereas for whatever reason they
19 felt they needed more time to look at it, we
20 would have given an extension, but Your Honor,
21 they had gone that investigation with full
22 support and cooperation from us and had reviewed
23 the issues and had concluded that there were no
24 claims. I would also note that counsel for

1 Harbard not only knew of these issues related to
2 PUHCA and this issue, but they actually objected
3 to their financing order, we're in court for that
4 very long hearing, Your Honor, on the final
5 order, and Your Honor overruled their objection
6 and approved their financing order, and therefore
7 to suggest that they weren't aware of these
8 issues is just not...

9 Judge: Now, he didn't say he was unaware. Counsel for
10 Harbard I thought was very candid with me which
11 said, we've known, and to the extent we've known
12 about issues like this you know, decided for
13 various strategic and we think appropriate valid
14 reasons not necessarily to raise them and in
15 fact, Mr. Kornberg made clear that they really
16 weren't raised directly with the committee. It's
17 not as if they came to the committee and said,
18 please do this, the committee just happened to
19 find out because of the discussions that were
20 going on elsewhere.

21 Bentley: I understand Your Honor, I may have
22 misunderstood.

1 Judge: So I don't think there's, I think Harbard's been
2 pretty upfront about it that to the extent they
3 knew about it, they didn't raise.

4 Bentley: I understand.

5 Judge: And consciously so.

6 Bentley: And finally with respect to the PUHCA issue
7 again, I don't believe that there's been a motion
8 brought, I don't believe that's properly before
9 the court. Again I will tell you that CSFB, when
10 this issue was raised with us, my firm, on behalf
11 of CSFB, did look at this issue and concluded
12 that there was no valid claim here, but Your
13 Honor, I guess people want to bring a motion on,
14 if the credit committee wants to bring a motion
15 on, we'll respond to it, and explain why an
16 extension of time in connection with the PUHCA
17 issue is not relevant and would also be a waste
18 of estate assets, but I don't even think that's
19 proper before the court. With respect to the
20 comments made by counsel on the phone, without
21 belaboring the point too much and we'd be happy
22 to share the information with that counsel if he

1 would get in contact with me, and I'm not sure I
2 completely understood what he was saying but it
3 was 390 million dollars of debt on the filing
4 date, the CSFB date, and the agent, as agent for
5 the bank group. There was 390 million due today,
6 280 million is subject to liens at the Montana
7 level, and 110 is subject to liens at the South
8 Dakota level. That has not changed, that amount
9 has not gone up, We don't have a revolving, the
10 financing approved, we had a term loan approved,
11 Your Honor, remember that the big issue that the
12 financing would have - that we arguably not
13 extending "new credit" in connection with the
14 financing, although we believe we did extend
15 value by extending it into an exit financing.
16 But, if counsel would like me to work with them
17 to clarify that, I can certainly do that. The
18 only other point I want to make Your Honor, and I
19 think this also goes to the heart of Magten's
20 motion, I noticed that counsel for Magten said at
21 one point in discussing the motion for release in
22 the stay. CSFB, we believe that if we conclude
23 that CSFB had knowledge, which they did, of the
24 fact that this was a fraudulent conveyance, I

1 think that's pretty much the words that she used,
2 then there's a claim against CSFB. It's
3 interesting to note that counsel for Magten is
4 asking for an extension of time to investigate
5 these issues, but is standing up in court and
6 saying, CSFB did have knowledge, as if they've
7 already performed an investigation and actually
8 have evidence that they could submit to the court
9 showing that there's a valid fraudulent
10 conveyance to them, which I don't believe is the
11 case, because I think if it were they wouldn't be
12 asking for more time to investigate the issue,
13 which I think goes to the heart of this. I think
14 what this is really about, Your Honor, and I
15 think I said this in connection with the motion
16 from the relief from the state, this is really a
17 question of allocation of value between the
18 unsecured creditors, the general unsecureds, and
19 the holders of the --- not over and over and
20 above the value that goes to CSFB as a secured
21 creditor. This really has nothing to do with CSFB
22 at the end of the day. I believe that this is
23 pure equity allocation issue between two creditor
24 parties and ultimately hopefully they'll make a

1 deal and this company will come out of
2 bankruptcy. I think that people are focused on
3 CSFB because it's a convenient way to extend the
4 process and give it attention, but Your Honor, I
5 think that's really what this is about. I think
6 the creditors came and reviewed this and
7 concluded there are no claims and therefore
8 having continued to view does nothing other than
9 give a party hold-up value with a process that it
10 really shouldn't have. Thank you, Your Honor.

11 Judge: Mr. Rosten do you want to weight on this?

12 Rosten: Interesting after - Your Honor. I think to follow
13 on a comment, kind of a point Mr. Drak was making
14 I think as we're starting to find ourselves is
15 that with the debtor having now filed its point
16 of reorganization and disclosure statement that
17 we are indeed getting into the usual normal
18 confirmation process and creditors are starting
19 to jockey a little bit for position to deal where
20 ultimate recoveries are. That said, as it relates
21 to the Magten motion, I think that the court's
22 got to decide this in two issues. One is relates
23 specifically to the point that Magten has brought

1 this motion relative to looking at all of the
2 claims and liens and encumbrances relative to
3 CSFB, we as the debtor certainly acknowledge the
4 validity and enforceability of the CSFB debt when
5 we entered the interim order on the modification
6 of the CSFB financing and indeed I think that the
7 debtor, the committee has looked at that issue
8 and believes, concluded that there's nothing
9 untoward as it relates to those when you look at
10 perfection, when you look at the question of was
11 there consideration given for the granting of the
12 liens and what have you. So I think on that basis
13 Your Honor I would say no more time. It's been
14 almost six months from the time when the case
15 first started to the point that there was an
16 actual investigation because the court may
17 remember we were a couple months into the case
18 when we brought CSFB motion for amendment on an
19 issue. This issue that is a later issue that's
20 resonant relates to PUHCA and for the purposes of
21 the court reporter that is the acronym is PUHCA
22 which is acronym for the Public Utility Holding
23 Act of 1935. Did only indeed come up raised by
24 Harbor to the debtor where we then advised the

1 committee that this issue had arisen. And it has
2 only come up close to the expiration of one would
3 say the investigation period provided in the
4 final, the ____ financing order. I think to the
5 extent that this court is going to entertain any
6 extra time on behalf of the committee as related
7 to the CSFB financing. We certainly believe that
8 time has passed, but that to the extent there is
9 any additional time granted it should be for
10 purposes at looking at that limited issue
11 relative to the debtors compliance with PUHCA and
12 the impact of whether we have perfectly complied
13 or did not comply as Harbard is prone to suggest.

14

1 M: Whether we had partly complied or did not comply
2 as Harbard is a firm to suggest. And what that
3 may do, not only with CSFB financing as been the
4 center today but whether it indeed it relates the
5 whole \$750 million senior unsecured bonds,
6 because the guts of the Harbard's argument is the
7 extent that there was a bad faith filing, that
8 happened to the debtor with an exception with the
9 SEC or compliance with the CUKA, that any debt
10 issue after that filing may well be void abonicio
11 if there was an appropriate to be made that the
12 holders of the debt, CSFB, or the individuals
13 holder the senior unsecured debt indeed had
14 knowledge and actually was aware that there was a
15 bad faith filing. We as a debtor certainly take
16 issue with the Harbard's assertions and we're to
17 address if and whenever they come on a formal
18 basis, but I think it should be clear that this
19 issue relates not just to CSFB. It does relate to
20 the whole senior debt structure of the debtor. My
21 last comment, Your Honor, is that I wanted to
22 make sure to the extent that there issues being
23 raised that this court was being clear. We have
24 given on behalf of this debtor everybody noticed

1 that we know we have to give notice on major
2 matters, we have given that notice to Mr.
3 McGarvey on behalf of the McGreevy plaintiffs,
4 we've given notice to the SEC. So I didn't want
5 this court to come away with any perspective that
6 is related to matters that are going in case
7 beyond this hearing, finances, whatsoever, is
8 that there had been any Thayer [?] on the service
9 list provided appropriate notes, and with that
10 Your Honor I will close.

11 Judge: On that final point, I hope I've made it clear
12 that to the extent of any individual party thinks
13 that it has grounds for relief from any order for
14 lack of notice or any other due process or
15 mistake, burdens, fraud, whatever, as governed in
16 my rule by Rule 60 and you have to bring on an
17 appropriate motion with a factual background and
18 I'm not going to really address those things in
19 the abstract, to the extent that somebody thinks
20 they have that, they can bring that and it will
21 be fully aired and we'll hear that. You look like
22 you want to say something else. Right.

1 F: I think that what we've learned today is that the
2 committee Mr. Kornberg got lucky because we filed
3 a motion so that the official committee could
4 continue it's investigation and low and behold,
5 it came to the attention of the official
6 committee, that they didn't do a complete
7 investigation and issue came up. Mr. Kornberg,
8 even he didn't think of it, other people admit
9 they didn't think of it, the committee had
10 regulatory counsel, they didn't think of it, but
11 low and behold, t here is an issue that has a
12 reason, we did make a motion within the time that
13 was specified and before the expiration of the
14 120 day period so that the committee could
15 investigate and there was no reason if the PUHCA
16 issue or other issues exist that the creditors on
17 the committee should be deprived of the benefit
18 of having looked at that motion because people
19 admit that they didn't think of it in time when a
20 member of the committee didn't move this court
21 for the committee itself to have additional time
22 within the required timeframe. The fact that...

1 Judge: But of course your motion had nothing to do with
2 PUHCA?

3 F: My motion had nothing to do with PUHCA, that's
4 right, that's why Mr. Kornberg and
5 parenthetically the committee got lucky because
6 we did believe that there were claims that have
7 to be looked at and the PUHCA is one of them and
8 we get to do it in the limited time that's
9 allotted by this court so that the investigation
10 is complete, I think that protects the interest
11 of all involved and indeed, protects the
12 fiduciary obligations that the committee has to
13 creditors. And I do agree with Mr. Gerack on
14 that, CSFB indeed did not make any new financing
15 available and I --- the pre-petition amounts that
16 they had already lent in a --- thank you.

17 Judge: I think I'm going to be able to rule on this
18 today, but I want to think about it, five or ten
19 minute break, I know it's almost 6 o'clock, but
20 we'll be back no later than 6 o'clock and wrap
21 this up. And adjournment until then.

22 Judge: Please be seated.

1 M: Can I say one thing real quick. I swear it's not
2 argument or anything, just, I just wanted to give
3 you a little more background. I just wanted the
4 court to be aware that I was not aware of this
5 PUHCA issue from Day One or anything. We're
6 operating on our own nickel in this case right
7 now. I only got the PUHCA lawyer involved in the
8 context of the reorganization and whether that
9 was subject to PUHCA etc. For all of the lawyers
10 here, I don't think any of us knew about it early
11 on in the case. I just want to let you know.

12 Judge: Well, we have our two related motions, one motion
13 for relief from the automatic stay, it was filed
14 by Magten, it's the holder of certain instruments
15 called quits that were initiated issues, as I
16 understand it, at the Montana Power level and
17 through various, went up through a company called
18 Clarkfork and Blackfoot which then was eventually
19 merged into the debtor. One of the issues there
20 is whether or not Magten is a creditor of the
21 entity at the Clarkfork and Blackfoot level. Or,
22 simply a creditor at the Northwestern level. The
23 motion for the - stay is somewhat unusual because

1 it seeks to file a fraudulent conveyance case
2 against the debtor as the recipient of a
3 fraudulent conveyance rather than what we
4 typically see which is the debtor in its capacity
5 as debtor in possession filing a fraudulent
6 conveyance against the three party to bring an
7 asset into the estate, this is an effort a part
8 to file a lawsuit to remove an asset from the
9 estate in effect, or to impose a constructive
10 trust upon that. That motion was joined in a
11 group known as the McGreevy Class which is a
12 certified class in pending litigation which
13 claims to have certain rights under court order
14 stipulations and other proceedings that have
15 taken place in the class action litigation.
16 McGreevy has indicated that it would intervene in
17 the Magten lawsuit where it would file, or
18 perhaps it would file its own litigation. The
19 McGreevy joinder in this has come during the
20 course of the proceeding and therefore is not
21 fully flushed out to the same extent as the
22 Magten issue. The debtor and others take the
23 position that the position for relief should be
24 denied because Magten is not a creditor of

1 Clarkfork therefore would not have standing to
2 pursue the fraudulent conveyance on the grounds
3 that it did not show that it was harmed by the
4 fact that there were assets that were transferred
5 away from Clarkfork to, eventually upstream to
6 Northwestern. At the same time most parties
7 acknowledged that these are issues that have been
8 lurking around in this case, and need to be
9 redressed and resolved at some level In order to
10 move the process of the reorganization along.
11 With regard to the motion for release of stay,
12 the debtor also made the point that it did not
13 think that cause had been shown that this matter
14 could in fact be resolved through the claims
15 process and was concerned also that there had
16 been no evidence presented under the written
17 materials that were filed by Magten. It seems to
18 me that it's in the best interest of all parties
19 here to flush these issues out and to allow them
20 to be resolved. So I'm going to grant the motion
21 of Magten to file for a lawsuit under the
22 condition I'm also going to direct them to file
23 the lawsuit within 10 days. Then I think the
24 issues of standing, availability of the remedy

1 and everything else can be resolved in the
2 context of the litigation, through a motion to
3 dismiss, a summary for summary judgment or
4 whatever is appropriate. CSFB has taken the
5 position that it doesn't really matter because
6 their liens are past these assets in any event to
7 the extent that Magten is seeking any relief
8 against CSFB, it needs so to state to the extent
9 that that would be relief that CSFB would be
10 precluded under the zip order than that could be
11 a defense that it would raise in that lawsuit. I
12 think these things are better resolved in the
13 context of that kind of litigation environment
14 where all parties have, know what their rights
15 and remedies are under the rules of civil
16 procedure then through this motion practice. So,
17 I'm going to grant that motion. With regard to
18 McGreevy, frankly I think the McGreevy situation
19 is sufficiently different that if McGreevy wishes
20 to file its own lawsuit or intervene it needs to
21 do that through its own motion and get that on
22 immediately so that it can be heard at the next
23 omnibus hearing which is in May 17th, then for
24 example, I think it was clear and reasonably so

1 that the committee was not really prepared to
2 address the question of how McGreevy, what it's
3 position would be vis a vie McGreevy because
4 there are different factors that - the standing
5 issue does not come directly up, but whether or
6 not they have a sufficiently liquidated claim to
7 be able to show cause that they should be able,
8 pursue such a litigation and there's also an
9 issue. ON the other hand, they claim to have
10 certain rights and remedies as a result of
11 stipulations by the debtor and/or orders of the
12 other court, so I don't think that was
13 sufficiently well developed to have a motion to
14 rule out - the order today in the estate relief
15 will be granted, you have 10 days to file, if
16 they don't file within 10 days then they're
17 barred by it. That's at the Magten level with
18 regard to the so-called Clarkfork fraudulent
19 conveyance. The second motion that was filed is a
20 motion, it's quite an odd motion so I'll try to
21 see if I can specify what I understand it to be,
22 it's a motion by Magten, who is a member of the
23 committee, to give the committee additional time
24 to investigate something that the committee has

1 already investigated and doesn't want additional
2 time to investigate. And that really when you
3 state it, kind of presents the conundrum of the
4 motion. That this order is quite clear that the
5 right to investigate the validity and
6 enforceability, not avoidability, perfection
7 amount of the CSFB facility lies with the
8 committee. The committee has undertaken that job
9 with the cooperation of CSFB. That committee has
10 concluded that it is not going to file an action
11 and indeed committee counsel has advised the
12 court today that it thinks that it would not be
13 in the interest of its constituency to file such
14 an action because in fact it's, it would be an
15 action on behalf of the creditors of another
16 entity as opposed to the unsecured creditors of
17 the particular entity that the committee
18 represents. I don't think under those
19 circumstances that with regard to the extension
20 the time that cause has been shown so that motion
21 will be denied. The second part of that is
22 whether or not the committee's subsequent request
23 for 45 days should be granted because it has been
24 aware of certain PUHCA issues, that it believes

1 from a fiduciary standpoint then it least has to
2 investigate and it was not a ...

3 M: Litigation claimant from a debtor's perspective
4 is an unliquidated claim.

5 Judge: I think they fall in the same category as
6 McGreevy.

7 M: I just wanted a clarification of that. That's
8 where I think it would fall Judge but I wanted
9 the record to be clear in that business.

10 Judge: And again if McGreevy and/or Cananche come
11 forward and make a straight forward case that is
12 consistent with the ruling I made today that this
13 is an issue that needs to be teed up and resolved
14 that is different from the Magten issue because
15 it may not raise the same preliminary standard
16 issues or other kinds of things or it may be
17 based upon other rights or remedies that MagTen
18 doesn't have, or Magten may have rights and
19 remedies that they don't have that would play out
20 either way. I think they should file their own
21 motion. We'll get it heard next time. My overall

1 concern is I think that other consensually or by
2 litigation these kinds of issues need to be
3 resolved because they impact very directly upon
4 confirmation issues. I don't mean by that there
5 are deaf now necessarily but they do have an
6 impact upon what stands for the creditors and who
7 gets carved up and what kind of a condition in
8 that seems to me to be essential. That could be
9 put off and litigated as part of the contested
10 confirmation trial, which sounds to me like quite
11 a bad idea.

12 M: We would concur Your Honor.

13 Judge: And I think by teeing them up in the litigation
14 mode at this point, that either if they had to be
15 resolved by litigation, though because farther
16 down the line and we'll be in a position to do
17 that at that point or the litigation process
18 mainly to a resolution of the issues in the
19 context of how the issues developed in the
20 litigation, so either way it's better to get
21 started sooner rather than later with those and
22 that's why I'm planning that motion and why
23 frankly I'd be inclined to go with the McGreevy

1 and the Camanche motions if once they've been
2 specified and once the parties have had the
3 opportunity to respond, so long as they're not
4 duplicative or so long as by virtue of the fact
5 that they are liquidated claims, they really
6 wouldn't have any right to bring those actions or
7 whatever those threshold issues are. I don't want
8 to decide what is basically I think correctly
9 stated by counsel for Magten is basically a
10 motion to dismiss issue as a preliminary
11 gatekeeper as we say, where you don't get to file
12 the lawsuit because it appears that maybe you're
13 going to lose a motion to dismiss, well let's
14 file a lawsuit and then a motion to dismiss and
15 that we'll actually resolve it on the merits
16 rather than on some preliminary fashion. We also
17 know that the standard is for that decision and
18 I'm not quite sure we all know what the standard
19 is to be applied when you say you can't do
20 something because you're likely to lose. And just
21 by the win or lose, and then we're dealing with
22 the rules of civil procedure and everybody knows
23 how that game is played. Okay? Is that clear
24 enough.

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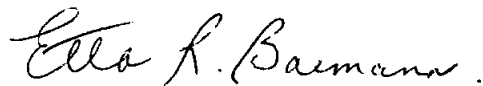
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